IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

Bail Appl..No. 6904 of 2007()

CRIME NO.138/2007 OF CHANGANACHERRY POLICE STATION

: PETITIONER/ACCUSED

SIBI M.C., S/O. T.M.CHACKO, AGED 30,
MANCHAMALAYIL, KUNNANTHANAM VILLAGE,
MALLAPPALLY TALUK, PATHANAMTHITTA.

BY ADV. SRI.R.MURALEEKRISHNAN

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6904 of 2007

Dated this the 27th day of November, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations in a crime registered under Section 379 I.P.C. The crux of the allegations is that the petitioner went to the office of the defacto complainant, a woman. She is a reporter in a daily. The petitioner also works as a person furnishing news to the daily. On 27.02.2007, the defacto complainant was available in the office. The petitioner allegedly went there. He allegedly decamped with the mobile phone of the defacto complainant. The defacto complainant allegedly made frantic enquiries. She confirmed that it was the petitioner who had taken away the mobile phone. The petitioner was not available. It is, in these circumstances, she ultimately went to the police and lodged the F.I statement, in which specific allegations are raised against the petitioners.

2. The investigation commenced. The police were not able to trace the petitioner. He was allegedly absconding. The investigation led the police to the conclusion that it was the petitioner who had taken away the article. So, without and before tracing the petitioner or the stolen article, a final report/charge sheet under Section 379

I.P.C is seen filed before the learned Magistrate. The Magistrate took cognizance also. It is at that stage that the petitioner has come before this Court with this application for anticipatory bail.

3. According to the petitioner, he is absolutely innocent. He has nothing to do with the loss of the mobile phone of the defacto complainant. Because of the strain in the relationship, absolutely false allegations are now being raised against the petitioner. The petitioner may, in these circumstances, be granted anticipatory bail, it is prayed.

4. Less said about the quality of the investigation in this crime, the better. Obviously after the matter was discussed in court and at the direction of the prosecutor concerned, an application has been filed to re-open the investigation. Requisite permission under Section 173 (8) Cr.P.C has already been sought. The learned Public Prosecutor now submits that further investigation is in progress. The petitioner has to be arrested and interrogated. Attempts must be made to recover the stolen article. At any rate, in these circumstances, the petitioner may not be granted anticipatory bail. The learned Public Prosecutor further submits that the filing of the final report without arresting and interrogating the petitioner and before making attempts to recover the stolen article may not be justified. But the totality of circumstances reveal the complicity of the

petitioner and at any rate this is not a fit case where anticipatory bail can or ought to be granted in favour of the petitioner. The petitioner has to be interrogated. His version has to be ascertained. Attempts must be made to recover the stolen article. This petition may, in these circumstances, be dismissed. The petitioner may not be permitted to arm himself with an order of anticipatory bail in the peculiar facts and circumstances of this case, submits the learned Public Prosecutor. The learned Public Prosecutor has placed the case diary before me. He points out the events that had taken place after the registration of the crime. The defacto complainant asserts that she had contacted the petitioner in his mobile number later and had confirmed that the mobile phone had been taken away by the petitioner. Persons have seen the petitioner meddling with the mobile phone of the defacto complainant and also walking out of the office with the mobile phone. In these circumstances, at any rate, extraordinary equitable discretion under Section 438 Cr.P.C may not be invoked in favour of the petitioner, submits the learned Public Prosecutor .

5. The learned counsel for the petitioner in reply submits that there is strain in the relationship between the defacto complainant and the petitioner and false allegations are being raised against the petitioner on that score.

6. I have considered all the relevant inputs. I have considered the submissions of the rival contestants. I have perused the case diary. I shall carefully avoid any detailed discussion about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that I am unable to perceive any features in this case that can justify the issue of directions under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate. He must then seek regular bail in the usual course. Though dissatisfied with the filing of the final report before the essentials of investigation were completed, I am not persuaded to grant anticipatory bail to the petitioner.

7. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-